

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 21-1140V

Filed: August 21, 2023

KERRIE BURKETT,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Master Horner

*Andrew Donald Downing, Downing, Allison & Jorgenson, Phoenix, AZ , for petitioner.  
Jamica Maria Littles, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On March 31, 2021, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of her October 30, 2017 influenza vaccination. (ECF No. 1.)

On July 26, 2023, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. (ECF No. 44.) On August 21, 2023, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$85,000.00 for pain and suffering, \$1,013.39 for past unreimbursable expenses, and \$1,069.22 for lost wages. (ECF No. 47.) In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that petitioner is entitled to an award as stated in the Proffer.

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<sup>1</sup> Because this document contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the document will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755.

Pursuant to the terms stated in the attached Proffer, **I award petitioner a lump sum payment of \$87,082.61, representing \$85,000.00 for pain and suffering, \$1,013.39 for past unreimbursable expenses, and \$1,069.22 for lost wages, in the form of a check payable to petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Daniel T. Horner**  
Daniel T. Horner  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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|---------------------|---|-----------------------|
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| KERRIE BURKETT,     | ) |                       |
|                     | ) |                       |
| Petitioner,         | ) |                       |
|                     | ) | No. 21-1140V          |
| v.                  | ) | Special Master Horner |
|                     | ) | ECF                   |
| SECRETARY OF HEALTH | ) |                       |
| AND HUMAN SERVICES, | ) |                       |
|                     | ) |                       |
| Respondent.         | ) |                       |
|                     | ) |                       |

On March 31, 2021, Kerrie Burkett (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”). Petitioner alleges that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine that she received on October 30, 2020. Petition, ECF No. 1 at 1.

On December 5, 2022, petitioner filed a Motion for Decision on the Record (“Motion”).<sup>1</sup> ECF No. 30. Respondent filed a response to petitioner’s Motion on February 23, 2023. ECF No. 32. Petitioner filed a reply on March 9, 2023. ECF No. 33.

This case was reassigned to Special Master Horner on March 10, 2023 (ECF No. 35), and on April 26, 2023, respondent filed a status report indicating that he had completed his medical review (ECF No. 38).

On July 13, 2023, respondent filed his Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a SIRVA Table injury. ECF No. 40.

<sup>1</sup> When petitioner filed her Motion on December 5, 2022, respondent had not completed his medical review of this case.

On July 26, 2023, the Court issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 44.

**I. Items of Compensation**

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$85,000.00 in pain and suffering.

*See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that she incurred past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$1,013.39. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

C. Lost Wages

Evidence supplied by petitioner documents that she incurred past lost wages related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past lost wages in the amount of \$1,069.22. *See* 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation be provided to petitioner through a lump sum payment as described below and requests that the Court's decision and the Court's judgment

award the following<sup>2</sup>: a lump sum payment of \$87,082.61, in the form of a check payable to petitioner.

**III. Summary of Recommended Payments Following Judgment**

Lump sum payable to petitioner, Kerrie Burkett: **\$87,082.61**

Respectfully submitted,

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Principal Deputy Assistant Attorney General

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Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
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/s/ Jamica M. Littles  
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DATED: August 21, 2023

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<sup>2</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future, unreimbursed expenses, future lost earnings and future pain and suffering.